



1111 20th Street, N.W.
Suite 450
Washington, D.C. 20036
(202) 653-5175

TO: Members of the Bar who practice before the Tribunal

DATE: August 12, 1985

POLICY STATEMENT ON EX PARTE COMMUNICATIONS

The Tribunal is currently conducting two proceedings, the 1983 Cable Distribution Proceeding, and the 1982 and 1983 Jukebox Distribution Proceeding (consolidated). It also has on file a petition from Turner Broadcasting System, Inc. (TBS) to institute a proceeding to adjust the cable royalty rate as it pertains to carriage of WTBS, Atlanta, Georgia. The Tribunal believes, therefore, that it is appropriate at this time to restate its rules on ex parte communications and to state its interpretation of the rules as it relates to all Tribunal proceedings.

Section 301.17 Ex parte communication.

(a) No person not employed by the Tribunal and no employee of the Tribunal who performs any investigative function in connection with a Tribunal proceeding shall communicate, directly or indirectly, with any member of the Tribunal or with any employee involved with the decisions of the proceeding, with respect to the merits of any proceeding before the Tribunal or of a factually related proceeding.

(b) No member of the Tribunal and no employee involved in the decision of a proceeding shall communicate, directly or indirectly, with any person not employed by the Tribunal or with any employee of the Tribunal who performs an investigative function in connection with the proceeding, with respect to the merit of any proceeding before the Tribunal or of a factually related proceeding.

(c) If an ex parte communication is made to or by any member of the Tribunal or employee involved in the decision of the proceeding, in violation of paragraph (a) or (b) of this section, such member or employee shall promptly inform the Tribunal of the substance of such communication and of the circumstance surrounding it. The Tribunal shall then take such action it considers appropriate; provided that any written ex parte communication and a summary of any oral ex parte communication shall be made part of the public records of the Tribunal, but shall not be considered part of the record for the purposes of decision unless introduced into evidence by one of the parties.

(d) A request for information with respect to the status of proceeding shall not be considered an ex parte communication prohibited by this section.

Interpretations

"Proceeding before the Tribunal" - At present, this includes the 1983 Cable Distribution Proceeding, the 1982 and 1983 Jukebox Distribution Proceeding (consolidated), and the merits of the TBS petition.

"Employee involved in the decision of a proceeding" - This includes the general counsel, the economist (at such time as one is hired) and the Commissioners' confidential assistants. In addition, the phrase shall include until further notice any clerical staff and any volunteer law students.

"the merit of any proceeding" - This includes any discussion of the facts or questions of law which the Tribunal must weigh in reaching its decision. Regarding the question of the procedures which shape the proceedings, although they do not technically relate to the merits of the proceeding, the Tribunal believes that the procedures can have such an important influence on the outcome of the proceedings, that questions about them should be raised either by written pleading, by on-the-record statements, or by off-the-record statements when all parties are present. Whether a procedure is of such importance that it shapes the proceeding will be determined by the Tribunal.

"the status of proceeding" - This includes the scheduling of hearing dates, the scheduling of witnesses, hearing locations, filing of royalty claims, and the providing of any other information that is a matter of record with the Tribunal.

"such action it considers appropriate" - This includes the remedies available under Section 557 of the Administrative Procedure Act.



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